



Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299

September 12, 2014

By ECF

Hon. Sidney H. Stein
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Peter J.W. Sherwin
Member of the Firm
d 212.969.3261
f 212.969.2900
psherwin@proskauer.com
www.proskauer.com

Re: *In the matter of the Petition for the Appointment of an Arbitrator in the
Arbitration between Hamilton Properties Limited against FHR Gulf Management
FZ LLC et ano., 14 Civ. 6507 (SHS/KF)*

Dear Judge Stein:

We represent FHR Gulf Management FZ LLC and Fairmont Hotels & Resorts (U.S.) Inc. (together, "Fairmont") in the above-referenced action. The parties' papers on the petition by Hamilton Properties Limited and cross-petition by Fairmont are now fully submitted. Since that time, the parties have received a communication from one of the arbitrators Fairmont proposed, John Fellas, regarding his availability, a copy of which we enclose for the Court's information.

Respectfully submitted,

/s/ Peter J.W. Sherwin

Peter J.W. Sherwin

Enclosure

cc: counsel of record by ECF

Morris, Matthew J.

From: Fellas, John <fellas@hugheshubbard.com>
Sent: Friday, September 12, 2014 1:08 PM
To: Kratenstein, Andrew
Cc: Pattiz, Keith; Christensen, Henry; Calandra, John; Lu, Audrey; Morris, Matthew J.; Sherwin, Peter J.W.
Subject: RE: Potential Nomination as Sole Arbitrator in ICDR Case

Dear Colleagues

This is to provide an update regarding my availability to serve as an arbitrator in this case. I was yesterday retained for a case as counsel that, taking into account my other commitments, will significantly impact my ability to serve as an arbitrator in this case – were I to be selected -- in the immediate short term, i.e. for the next 2 or 3 months. I am mindful that this arbitration needs to be resolved 120 days from the appointment of the arbitrator, and so wanted to let you know sooner rather than later of this development.

I would completely understand if this development takes me out of consideration, and, if so, I thank both parties for thinking of me and wish both the best of luck for a sound resolution of this matter. If my unavailability in the immediate short term is not disqualifying, however, I am happy still to be considered.

Best regards,

John Fellas

**Hughes
Hubbard**

John Fellas | *Partner*

Hughes Hubbard & Reed LLP | One Battery Park Plaza | New York, NY 10004-1482
Office + 1 212-837-6075 | Cell + 1 917-513-6882 | Fax + 1 212-299-6075
fellas@hugheshubbard.com

From: Kratenstein, Andrew [mailto:AKratenstein@mwe.com]
Sent: Tuesday, September 02, 2014 5:08 PM
To: Fellas, John
Cc: Pattiz, Keith; Christensen, Henry; Calandra, John; Lu, Audrey; 'MMorris@proskauer.com'; 'PSherwin@proskauer.com'
Subject: RE: Potential Nomination as Sole Arbitrator in ICDR Case

Thank you.

Andrew B. Kratenstein
Partner

**McDermott
Will & Emery**

McDermott Will & Emery LLP | 340 Madison Avenue | New York, NY 10173-1922
Tel +1 212 547 5695 | Fax +1 212 547 5444

[Biography](#) | [Website](#) | [vCard](#) | [E-mail](#) | [Twitter](#) | [LinkedIn](#) | [Blog](#)

From: Fellas, John [mailto:fellas@hugheshubbard.com]
Sent: Tuesday, September 02, 2014 5:07 PM
To: Kratenstein, Andrew

Cc: Pattiz, Keith; Christensen, Henry; Calandra, John; Lu, Audrey; 'MMorris@proskauer.com'; 'PSherwin@proskauer.com'
Subject: RE: Potential Nomination as Sole Arbitrator in ICDR Case

Dear Mr. Kratenstein,

With apologies for my delay.

In terms of question 1 (a) to (j), I disclose that one of my partners provides ERISA advice to her former law firm, the ultimate beneficiaries of which are that firms' clients. I understand that one of that firm's clients is a member of the group identified in 1(d).

In terms of question 1 (k) to (l), as I have already mentioned, I have been appointed as an arbitrator in two independent and unrelated ICC cases; Proskauer is co-counsel for one party in one, McDermott is co-counsel for one party in the other. These cases do not involve the hotel industry so I assume that they are unrelated to the case which is the subject of your inquiry. To the best of my knowledge, none of the lawyers from those firms receiving this e-mail is involved in those other cases.

In addition, I have come across attorneys from both firms at professional conferences and the like. I can't recall every instance and don't keep a record. But I do specifically recall that I have spoken at the same arbitration conference as Peter Sherwin on more than one occasion.

My firm is likely in the ordinary course to have professional relationships with counsel for both parties, but a conflicts search has revealed no active matters except in the context of the bankruptcies of the Lehman Brothers and MF Global brokerage firms with which my firm is involved.

None of the above would preclude me from acting as an independent and impartial arbitrator in this matter if I were to be selected.

Best regards,

John Fellas

**Hughes
Hubbard**

John Fellas | *Partner*

Hughes Hubbard & Reed LLP | One Battery Park Plaza | New York, NY 10004-1482
Office + 1 212-837-6075 | Cell + 1 917-513-6882 | Fax + 1 212-299-6075
fellas@hugheshubbard.com

From: Kratenstein, Andrew [<mailto:AKratenstein@mwe.com>]

Sent: Friday, August 29, 2014 5:30 PM

To: Fellas, John

Cc: Pattiz, Keith; Christensen, Henry; Calandra, John; Lu, Audrey; 'MMorris@proskauer.com'; 'PSherwin@proskauer.com'

Subject: Re: Potential Nomination as Sole Arbitrator in ICDR Case

Correct, it is Misland, not Midland.

From: Fellas, John [<mailto:fellas@hugheshubbard.com>]

Sent: Friday, August 29, 2014 05:24 PM

To: Kratenstein, Andrew

Cc: Pattiz, Keith; Christensen, Henry; Calandra, John; Lu, Audrey; Morris, Matthew J. <MMorris@proskauer.com>;
Sherwin, Peter J.W. <PSherwin@proskauer.com>

Subject: Re: Potential Nomination as Sole Arbitrator in ICDR Case

Dear Mr Kratenstein

My conflicts department has asked me to check that the reference to "Misland Capital" in 1(i) is not to "Midland Capital"

Thanks

Best regards

John Fellas

Sent from my iPhone

On Aug 29, 2014, at 11:34 AM, "Kratenstein, Andrew" <AKratenstein@mwe.com> wrote:

Mr. Fellas,

Thank you for the response. To clarify, "e" refers back to "a" through "d", while "j" refers back to "f" through "i".

Andrew B. Kratenstein

Partner

<image002.gif>

McDermott Will & Emery LLP | 340 Madison Avenue | New York, NY 10173-1922
Tel +1 212 547 5695 | Fax +1 212 547 5444

[Biography](#) | [Website](#) | [vCard](#) | [E-mail](#) | [Twitter](#) | [LinkedIn](#) | [Blog](#)

From: Fellas, John [<mailto:fellas@hugheshubbard.com>]

Sent: Friday, August 29, 2014 10:34 AM

To: Kratenstein, Andrew

Cc: Pattiz, Keith; Christensen, Henry; Calandra, John; Lu, Audrey; Morris, Matthew J.; Sherwin, Peter J.W.

Subject: RE: Potential Nomination as Sole Arbitrator in ICDR Case

Dear Mr. Kratenstein,

Thanks for the message.

On question 1, please let me run the entities through my firm's data base and revert. A quick question - do "e." and "j." refer back to the immediately preceding entity, i.e. "d." and "i." respectively?

On question 2, the answer is no.

On question 3, there has been no change to my schedule since writing below. Although now that we are a month further along, I should note that I will be out of action for much of the week of Christmas and New Year.

Best regards,

John Fellas

<image003.jpg> **John Fellas** | *Partner*

Hughes Hubbard & Reed LLP | One Battery Park Plaza | New York, NY 10004-1482
Office + 1 212-837-6075 | Cell + 1 917-513-6882 | Fax + 1 212-299-6075
fellas@hugheshubbard.com

From: Kratenstein, Andrew [<mailto:AKratenstein@mwe.com>]

Sent: Friday, August 29, 2014 10:02 AM

To: Fellas, John

Cc: Pattiz, Keith; Christensen, Henry; Calandra, John; Lu, Audrey; Morris, Matthew J.; Sherwin, Peter J.W.

Subject: RE: Potential Nomination as Sole Arbitrator in ICDR Case

Mr. Fellas,

The arbitrator selection process is continuing in the matter discussed in the e-mail chain below. The arbitration agreement provides, among other things, that the single arbitrator “shall not be an Affiliate of or a Person who has any past, present, or currently contemplated future business or personal relationship with” any of the parties.

In connection with considering you as the sole arbitrator, we would like to know:

1. Do you or your firm have any past, present, or currently contemplated future business or personal relationship with any of the following:
 - a. FHR Gulf Management FZ LLC (part of the corporate group that manages hotels under the “Fairmont” brand);
 - b. Fairmont Hotels & Resorts (US) Inc. (another part of that group);
 - c. FRHI Hotels & Resorts (the corporate parent, which also covers the “Raffles” and “Swissotel” brands);
 - d. Katara Hospitality (f/k/a Qatar National Hotels Company), Kingdom Holding Company, and Colony Capital (the principal owners of Fairmont);
 - e. Any other entity in this group;
 - f. Hamilton Properties Limited (the owner of the Fairmont Hamilton Princess Hotel in Bermuda);
 - g. A & A Investments Limited (the owner of Hamilton Properties Limited);
 - h. The Green family of Bermuda (the owner of A & A Investments), including Peter, Alexander, and Andrew Green;
 - i. Misland Capital (advisor to the owner with respect to the hotel);
 - j. Any other entity in this group;
 - k. McDermott Will & Emery LLP (including, but not limited to, the attorneys copied herewith);
 - or
 - l. Proskauer Rose LLP (including, but not limited to, the attorneys copied herewith).
2. Other than the emails below, have you been contacted separately by any of the foregoing parties or counsel?
3. Have there been any changes to your schedule that would impact your ability to meet the 120-day timetable?

We very much appreciate your time and attention in advising us.

Andrew B. Kratenstein

Partner

<image002.gif>

McDermott Will & Emery LLP | 340 Madison Avenue | New York, NY 10173-1922
Tel +1 212 547 5695 | Fax +1 212 547 5444

[Biography](#) | [Website](#) | [vCard](#) | [E-mail](#) | [Twitter](#) | [LinkedIn](#) | [Blog](#)

From: Sherwin, Peter J.W. [<mailto:PSherwin@proskauer.com>]
Sent: Tuesday, July 22, 2014 10:29 AM
To: Fellas, John
Cc: Kratenstein, Andrew; Pattiz, Keith; Christensen, Henry; Calandra, John; Lu, Audrey; Morris, Matthew J.
Subject: RE: Potential Nomination as Sole Arbitrator in ICDR Case

Dear Mr. Fellas,

Thank you very much for your prompt response. Counsel are conferring, and we will revert to you shortly.

Best regards,
Peter Sherwin

Peter J.W. Sherwin
Partner

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3261
f 212.969.2900
psherwin@proskauer.com

greenspaces
Please consider the environment before printing this email.

From: Fellas, John [<mailto:fellas@hugheshubbard.com>]
Sent: Monday, July 21, 2014 2:27 PM
To: Sherwin, Peter J.W.
Cc: Kratenstein, Andrew; Pattiz, Keith; Christensen, Henry; Calandra, John; Lu, Audrey; Morris, Matthew J.
Subject: RE: Potential Nomination as Sole Arbitrator in ICDR Case

Dear Colleagues

Let me first say thank you for thinking of me.

I have been involved a few hotel disputes over the course of my career. As counsel, the largest involved litigation in New York and Anguilla over a hotel in Anguilla – the dispute concerned both the management and ownership of the hotel. I have also been appointed an arbitrator in two disputes about the management of a hotel, one which recently settled (ICC Rules) and one which is on-going currently, hearings in March. (LCIA Rules).

In terms of timing, 4 months is ambitious but if all are willing to put in the effort, it can be done. I should note only that I will be going on vacation in August, and am not back until around August 27. I would be able to participate in a preliminary conference call while on vacation if need be. But if a major preliminary issue were to present itself requiring an in-person meeting at the initial stages of the case, I

would not be able to deal with it until I returned. Upon my return, because I recently had two weeks free up --- one in September and one in October -- as a result of hearings being postponed, I believe I would be able to devote the time necessary to the case. I should add, however, that I am out of action in hearings for the first 10 days of December. My November is currently fairly clear for hearings, however.

I should also note now in the interests of full disclosure that I have been appointed as an arbitrator in two independent and unrelated ICC cases; Proskauer is co-counsel for one party in one, McDermott is co-counsel for one party in the other. These cases do not involve the hotel industry so I assume that they are unrelated to the case which is the subject of your inquiry. To the best of my knowledge, none of the lawyers from those firms receiving this e-mail is involved in those other cases.

If you need any further information please do let me know.

Warm regards,

John Fellas

<image003.jpg> **John Fellas** | *Partner*
Hughes Hubbard & Reed LLP | One Battery Park Plaza | New York, NY 10004-1482
Office + 1 212-837-6075 | Cell + 1 917-513-6882 | Fax + 1 212-299-6075
fellas@hugheshubbard.com

From: Sherwin, Peter J.W. [<mailto:PSherwin@proskauer.com>]

Sent: Monday, July 21, 2014 12:21 PM

To: Fellas, John

Cc: Kratenstein, Andrew; Pattiz, Keith; Christensen, Henry; Calandra, John; Lu, Audrey; Morris, Matthew J.

Subject: Potential Nomination as Sole Arbitrator in ICDR Case

Dear Mr. Fellas,

I write as counsel to claimant in a substantial ICDR arbitration arising under a hotel management agreement, with a copy to counsel for respondent.

The arbitration agreement provides that the "arbitrator shall have not fewer than 10 years of experience in the luxury hotel and resort business." However, given the difficulty of finding a mutually acceptable sole arbitrator whose practice has focused on the hotel industry, the parties are also considering individuals who are highly respected in international arbitration who have some experience with hotel management disputes.

The arbitration agreement also provides that "the arbitrator shall be directed to establish a schedule for the conduct of the arbitration which shall yield a conclusion within 120 days following the appointment of the arbitrator." The place of arbitration is New York, and the governing law is that of New York.

Thus, in connection with our consideration of you as the sole arbitrator, we would like to know what experience you have with hotel management disputes and whether you have sufficient availability to meet the contractual timetable.

Best regards,
Peter Sherwin

Peter J.W. Sherwin

Partner

Proskauer

Eleven Times Square

New York, NY 10036-8299

d 212.969.3261

f 212.969.2900

psherwin@proskauer.com

greenspaces

Please consider the environment before printing this email

This message and its attachments are sent from a law firm and may contain information that is confidential and protected by privilege from disclosure.

If you are not the intended recipient, you are prohibited from printing, copying, forwarding or saving them.

Please delete the message and attachments without printing, copying, forwarding or saving them, and notify the sender immediately.

This email and any files transmitted with it may contain privileged or confidential information.

Use, disclosure, copying or distribution of this message by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please notify the sender by reply email and destroy all copies of this message in your possession, custody or control.

This message is a PRIVILEGED AND CONFIDENTIAL communication. This message and all attachments are a private communication sent by a law firm and may be confidential or protected by privilege. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of the information contained in or attached to this message is strictly prohibited. Please notify the sender of the delivery error by replying to this message, and then delete it from your system. Thank you.

Please visit <http://www.mwe.com/> for more information about our Firm.

This email and any files transmitted with it may contain privileged or confidential information.

Use, disclosure, copying or distribution of this message by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please notify the sender by reply email and destroy all copies of this message in your possession, custody or control.

This email and any files transmitted with it may contain privileged or confidential information. Use, disclosure,

copying or distribution of this message by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please notify the sender by reply email and destroy all copies of this message in your possession, custody or control.

This email and any files transmitted with it may contain privileged or confidential information. Use, disclosure, copying or distribution of this message by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please notify the sender by reply email and destroy all copies of this message in your possession, custody or control.

This email and any files transmitted with it may contain privileged or confidential information. Use, disclosure, copying or distribution of this message by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please notify the sender by reply email and destroy all copies of this message in your possession, custody or control.
